82-400

No. _____

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1982

GEORGE L. KARAPINKA,

Petitioner

vs.

UNITED STATES GOVERNMENT,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
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QUESTION PRESENTED

. Whether a pro se litigant is entitled to equal protection under the law in the United States Court of Appeals and in the United States District Court.

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Petitioner pro se prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit dismissing petitioner's appeal, and to review the proceedings in this case in the U.S. District Court for the Western District of Pennsylvania.

CITATIONS TO OPINIONS BELOW

The U.S. Court of Appeals for the Third Circuit, Circuit Judge John J. Gibbons dismissed petitioner's appeal with the Order of May 7, 1982, a copy of which is annexed hereto as Appendix a 1*.

JURISDICTION

The petitioner's appeal was dismissed by the U.S. Court of Appeals for the Third Circuit May 7, 1982. Petition for Rehearing was denied June 8, 1982.

The jurisdiction of this Court is envoked under Title 28, U.S.C., Section 1254.

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* References preceded by "a" refer to the Appendix below; "A" to the Appendix to Appellant's Brief.

STATEMENT OF THE CASE

Petitioner's pro se complaint charging the respondent, U.S. Government, with violation of Chapter VII of the Civil Rights Act of 1964, as amended in 1972, in dismissing him from his position of Research Chemist with the U.S. Department of Energy in August 1980, was filed June 8, 1981. He is seeking reinstatement to his former position with backpay, back benefits, and damages in excess of $ 10,000. Jurisdiction under 42 U. S.C. Section 2000e-16 is invoked.

July 17, 1981 respondent filed the motion to dismiss for lack of venue in the Western District of Pennsylvania. In his response petitioner showed that the venue in the Western District of Pensylvania was proper because that forum was convenient to him due to his health problems. Proper venue under 42 U.S.C. Section 2000e-5(f)(3) was invoked.

November 6, 1981 petitioner filed his motion for summary judgment (A-5) supported

by affidavits of George L. Karapinka (A-6, A-11). No sworn testimony of any kind was furnished by the respondent. The District Court's answer to this summary judgment motion was Magistrate's Report and Recommendation dated November 19; 1981 (A-14). By the Order of the U.S. District Judge Maurice B. Cohill, Jr. this motion was denied December 14, 1981.

October 23, 1981 respondent filed it's motion to transfer the case to the Northern District of West Virginia claiming that this forum was more convenient for it. By the Order dated November 17, 1981 of Magistrate Ila Jeanne Sensenich the respondent was ordered to file a brief in support of it's motion by December 11, 1981, the petitioner was ordered to file his answer to that brief by January 8, 1982. December 9, 1981 respondent's brief was served upon the petitioner This brief was not recorded in the District Court Clerk's docket entries. Some totally

irrelavant material was attached to that brief. Petitioner moved twice, January 25, 1982 and February 8, 1982 to have these irrelavancies stricken from the record; these motions were denied by Magistrate Sensenich. Petitioner's answer to that brief was filed January 7, 1982. The petitioner showed there that the Western District ofPennsylvania is unquestionably the most convenient forum for everybody. January 14, 1982 Magistrate Sensenich issued her Report and Recommendation on this motion, recommending that the respondent's motion be denied.

January 15, 1982 the petitioner filed his motion for summary judgment hearing (A-23 to A-28) supported by the affidavit of George L. Karapinka which showed that the petitioner was dismissed from his position with the U.S. Department of Energy on the basis of the perjurious testimony of the respondent's witness. January 19,1982 Magistrate Sensenich issued her Report and Recom

mendation, recommending that the motion for summary judgment (?) be denied (A-29). Since no ruling by the District Judge was passed on this motion for summary judgment hearing in 30 days, the petitioner filed notice of appeal February 16, 1982.

Respondent's motion to dismiss appeal for want of jurisdiction was served on the petitioner April 7, 1982. The respondent's argument was centered around the erroneous District Court Clerk's docket entry No. 32: "Motion for summary judgment filed by pltf with proposed order." The motion under that docket number was for Summary Judgment Hearing as all the records clearly show (A-33).

In his answer to the respondent's motion to dismiss appeal, the petitioner showed that the Magistrate's Report and Recommendation was apparently the only ruling of the District Court on the petitioner's motion for summary judgment hearing. He also showed that this order was appealable in view of this Court's rulings in Co-

hen v. Beneficial Loan Corp., 337 U.S. 541, 545-547 and in Gillespie v. U.S. Steel, 379 U.S. 148, 152-154.

April 26, 1982 petitioner mailed to the Clerk of the Court of Appeals for the Third Circuit Appellant's Brief and Appendix.

By the Order of the U.S. Circuit Judge John J. Gibbons dated may 7, 1982 the petitioner's appeal was dismissed (a 1). The entire Order states:"The forgoing Motion is/ are granted." No opinion was attached.

May 17, 1982 the petitioner mailed to the Court of Appeals for the Third Circuit his Petition for Rehearing. By the Order of Circuit Judge John J. Gibbons dated June 8, 1982 this Petition was denied.

June 17, 1982 petitioner mailed to the Court of Appeals for the Third Circuit his Motion for Reasons for Granting Appellee's Motion to Dismiss Appeal for Want of Jurisdiction. By the Order of the Honorable John J. Gibbons dated July 12, 1982 the petitio-

ner's motion was denimied (a 2).This Order states:"The forgoing Motion is/are denied since the government's papers adequately disclose the reasons."

August 9, 1982 U.S. District Judge Carol Los Mansmann's Order granted respondents motion to transfer case to Northern District of West Virginia. August 14, 1982 petitioner mailed his motion for stay of this Order to the District Court for the Western District of Pennsylvania. August 17, 1982 petitioner mailed his Petition for Writ of Mandamus to the Court of Appeals for the Third Circuit.

By a copy of a letter dated August 17, 1982 from Gilbert W. Conley, Clerk District Court for the Western District of Pennsylvania to Thomas F. Stafford, Clerk District Court for the Northern District of West Virginia the petitioner was informed that the District Court for the Western District of Pennsylvania had filed an appeal in petitioner's case.

August 27 petitioner received notification from the Court of Appeals for the Third Circuit that an appeal No. 82-5504 was filed in petitioner's case and a letter informing him that this appeal will be submitted to a panel for possible dismissal due to a jurisdictional defect.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the District Court and the Court of Appeals had failed to grant equal protection under the law to the pro se litigant. These decisions of the District Court and of the Court of Appeals are in conflict with the applicable decisions of this Court. This Court, therefore, is the only Court that can exercise the supervision needed.

PRO SE LITIGANT WAS DENIED EQUAL PROTECTION UNDER THE LAW.

Pro se litigants, in a great majority, are ignorant of law and legal procedure and normally in their pleadings they present their case by stating all the facts and they

hope that the District Court; Judges and Magistrates, and the Court of Appeals will decide their case on the merits. They also expect to be treated equally under the law and that no extraordinary treatment be metered out to them. For example in this petitioner's case a motion for summary judgment hearing was filed. The District Court and the Court of Appeals changed it, contrary to the petitioner's will, to a motion for summary judgment. The petitioner pro se was helpless to correct this change. This Court adressed itself to this problem partially in Conley v. Gibson, 355 U.S. 41 at 48.

To correct the second class treatment of pro se litigants, supervision of this Court is needed. Petitioner, therefore, prays that the certiorari will be granted to him.

The District Court for the Western District of Pennsylvania and the Court of Appeals for the Third Circuit had departed

from the accepted and usual course of judicial proceedings. This departure can be exemplified by the following:

1. Petitioner pro se was ordered against his will and against Federal Rules of Civil Procedure to amend his complaint by the District Court (Magistrate Sensenich) on September 22, 1981, in a fashion outlined by the Magistrate.

2. As the consequence of the respondent's motion to transfer the case to Northern District of West Virginia, Magistrate Sensenich issued the Order November 17, 1981 ordering the respondent to file a brief in support of that motion by December 11, 1981 and ordering the petitioner to file an answer by January 8, 1982. Respondent's brief was served upon the petitioner December 9, 1981, but as the District Court Clerk's docket entries (obtained by the petitioner during the appeal process) show it was never filed in the District Court. Petitioner's

motions to strike from that brief some irrelavant material were denied by Magistrate Sensenich without stating the reason. Appearently the Magistrate knew that the brief was never filed. This failure to obey Magistrate's Order by the respondent was totally ignored by the District Court.

In his answer filed Januaey 7, 1982, petitioner showed that the transfer of this case to the Northern District of West Virginia was inconvenient to <u>everybody</u> scheduled to take part in the trial, but specially to the petitioner. The District Court totally disregarded all of the facts presented by the petitioner and contrary to <u>Shutte v. Armco Steel Corp.</u>, 431 F.2d 22 (3rd Cir. 1970), by the Order of Honorable Carol Los Mansmann dated August 9, 1982 ordered the transfer of the case to the Northern District of West Virginia. Following the receipt of that Order, petitioner in accordance with the procedure outlined in 9 Moor's p.

178:

> "If the district court orders transfer beyond the circuit, it should be requested to stay the order until the determination of the petition for mandamus."

filed his Motion for Stay of Order(served August 14, 1982). Petition for Writ of Mandamus was served upon the Honorable Carol Los Mansmann on August 17, 1982.

District Court for the Western District of Pennsylvania filed the appeal (82-5504) on behalf of the petitioner, without his knowledge and against his will and against Federal Rules of Appellate Procedure, in the Court of Appeals for the Third Circuit on August 24, 1982. This appeal according to the letter from the Clerk of the Court of Appeals dated August 25, 1982, is jurisdictionally defective.

3. Petitioner's Motion for Summary Judgment Hearing (A-23) was docketed by the Clerk of the District Court as a motion for summary judgment. All the references by the District Court and by the Court of Appeals

to the Motion for Summary Judgment Hearing were made as to a motion for summary judgment. The only ruling of the District Court on the Motion for Summary Judgment Hearing (A-23 to A-28) was appearently Magistrate's Report and Recommendation (A-29). No ruling on that Motion by the District Judge took place so far (some 7 month). This Magistrate's Report and Recommendation and the lack of ruling by the District Judge (the lack of ruling was taken as the denial of the Motion) was appealed to the Court of Appeals for the Third Circuit.

The argument in the respondent's Motion to Dismiss Appeal for Want of Jurisdiction was centered around the nonappealability of the denial of nonexisting motion for summary judgment. This fact was made clear by the petitioner in his Petition for Rehearing. At Item 5 of respondent's motion the respondent states:"A fortiori, a Magistrate"s recommendation to deny motion for summary jud-

gment is not an appealable decision". Since no authorities were cited this unsupported statement was taken as one with no legal consequence, specially since it refered to a nonexisting motion for summary judgment.

The Order of the Circuit Judge Gibbons dismissing the appeal, only states:"The forgoing Motion is/are granted" (a 1). Petitioner, therefore, filed his motion for the reasons on the basis of which the appeal was dismissed. In the ruling on this motion Judge Gibbons states:"The forgoing Motion is/are denied since the government's papers adequately disclosed the reasons". The government's "papers" were based on an nonexisting motion. The petitioner, therefore, wonders how can an appeal be dismissed on the basis of a nonexisting fact.

It is the petitioner"s impression that the Court of Appeals should dismiss an Appeal, if there are grounds for such a dismissal, on Court's own reasons and on some

authority and not on the respondent's reasons.

The Court of Appeals appearently is keeping away from the petitioner the reasons for the dismissal of his appeal. Petitioner pro se found out recently, after the appeal was dismissed, that the magistrate's rulings are not appealable. If this is the reason for the dismissal of the appeal then the Court of Appeals should inform so the petitioner. This refusal of the reasons for the dismissal of the appeal by the Court of Appeals hindered greatly in the composition of this Petition.

CONCLUSION

The actions of the U.S. Court of Appeals for the Third Circuit and of the U.S. District Court for the Western District of Pennsylvania brought to the attention of this Court in this Petition are a departure from the accepted course of the judicial procedure. For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: September 1, 1982.

Respectfully submitted,

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